IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 827 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RAMCHAND MAJNUMAL KUNDANANI

Appearance:

ST MEHTA, APP for Petitioner

MR GT DAYANI WITH MS MAYA N BHAVNANI for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 18/02/2000

ORAL JUDGEMENT

1. This Appeal is preferred by the State against the respondents being aggrieved by the acquittal recorded by the learned Magistrate, First Class, Bardoli in Criminal Case No. 1777 of 1988 in favour of the respondents.

2. Both the present respondents came to be tried by the Magistrate, First Class, Bardoli, for the charges levelled against them under Sections 7(1) and read with Section 16 of the Prevention of Food Adulteration Act. As per the brief facts of the prosecution case, on 18th April, 1988, the complainant Mr. A.M. Shah, Food Inspector, Surat, visited the shop of the respondents at Bardoli. The respondents were doing the business of selling milk and ghee. The respondent No. 1 Ramchand Majnumal Kundnani was found present at the shop and sample of ghee was obtained by the complainant from him, which was seized and sealed in the presence of one Gomathi Ram Mathaprasad Ram in three samples, one sample out of which with the specimen of seal was sent to Public Analyst at Baroda, the remaining two samples were sent to local health authority by the complainant. During this process, complainant came to know that accused No.2 respondent No.2 herein Revachand Tarachand Kundnani was the owner of the shop. The report of the public analyst revealed that the sample contained turmeric and was not in accordance with the standards of the Prevention of Food Adulteration Act. The complainant thereafter processed for obtaining sanction to prosecute both the respondents. The sanction was accorded by the Assistant Director, Health Department on 9th June, 1988 to prosecute both the respondents. Hence, a complaint came to be filed before the learned Magistrate, Bardoli, which was registered as Criminal Case No. 1777 of 1988.

3. After full fledged trial and after hearing both the parties, learned Magistrate came to believe that on facts, the prosecution could establish the case against both the accused, but, he further observed that the sanction accorded by the Assistant Commissioner on 9th June, 1988 to prosecute the accused was not according to law because it did not contain reasons for prosecuting the accused and it was not mentioned that the complaint was required to be filed for the public purpose. Both the accused came to be acquitted by the learned Magistrate on that ground alone. Against which, the present Appeal is preferred by the State.

4. Learned APP Mr.S.T. Mehta has urged that on facts, the Magistrate has believed that the case has been proved by the prosecution beyond doubt, but the sanction accorded under Sec. 20(1) of the Act not being in

accordance with law and on that ground, learned Magistrate acquitted the accused. Learned Magistrate observed that the sanction did not contain the reasons for prosecuting the accused and that they did not mention that the sanction was accorded for public purpose. Learned APP has relied upon a decision of this court reported in the matter of HARSHVADAN DAHYALAL SEVAK, FOOD INSPECTOR vs. NARESHBHAI DEVANDAS VAGHVANI AND ANR., reported in 1991 (2) GLH 615 and has argued that the Division Bench of this Court has ruled that the sanctioning authority need not give reasons for according the sanction and merely recording of the sanction connotes that the prosecution is being launched for the public purpose.

5. While on the other hand learned Advocate Mr. G.T. Dayani, who raised the points of law regarding the

breach of Rule 14 of the Prevention of Food Adulteration Act, 1954 and the report of the Public Analyst being not admissible in the evidence. Mr. Dayani urged that the learned Magistrate has not dealt with the very vital aspect of the prosecution that Rule 14 is breached. According to the evidence of the complainant, the prosecution has failed to establish that the sample bottles were cleaned and properly dried, which is the requirement of Section 14 and breach of which, would vitiate the trial.

6. Having considered the rival contentions, the argument of learned APP Mr. Mehta regarding the reasons given by the Magistrate for not upholding the sanction is required to be accepted. The Division Bench's decision of this court in H.D. Sevak, Food Inspector (supra) ruled that the authority according consent to prosecute, need not give or record the reasons for launching of the prosecution. It is also not required to be expressly mentioned in the sanction that the prosecution is launched for the public purposes. The reasoning given by the learned Magistrate rejecting the sanction cannot hold ground any further on this aspect.

7. However, in this Appeal, when the scope of consideration is very wide, all aspects are required to be taken under examination of the case particularly law points whether raised before the trial court or not and

raised before this court, certainly requires to be determined. Some glaring illegality is noticed in coming to the conclusion by the Magistrate, which is required to be examined and determined.

8. Offences under the Prevention of Food Adulteration Act are serious offences affecting public health. Grave and serious punishment is provided for if the case is established by the prosecution beyond reasonable doubt. At the same time, as of duty, the paramount consideration of the State is liberty of citizen and fair trial to the accused as guaranteed by the Constitution to the citizens and, therefore, whenever such stringent statutes are enacted, trial to the accused is also ensured. In pursuance of this, some provisions are made to be complied with either by the investigating agencies or the complainant, to render credence to their evidence. If it is established that those provisions are scrupulously adhered to, the courts come down heavily upon the accused and if it is shown that those provisions are not adhered to, the court should not render credibility to the evidence of the prosecution and mere breach of such provision would result in vitiating the trial. Those provisions are interpreted by the courts to be the mandatory provisions.

9. Rule 14 of the Prevention of the Food Adulteration Act, 1954 reads as under :

> Rule 14: Manner of sending samples for analysis:
> Samples of food for the purpose of analysis shall be taken in clean dry-bottles or jars or in other suitable containers, which shall be closed sufficiently tight to prevent leakage, evaporation, or in the case of dry substance, entrance of moisture and shall be carefully sealed.

This Rule-14 casts duty on concerned public authority that the bottles or jars in which the samples for analysis is taken, shall be closed sufficiently tight to prevent leakage, evaporation, or in the case of dry substance, of moisture and shall be carefully sealed. It is the duty of the person concerned to scrupulously follow and to see that the bottles, jars or containers which are used for taking the sample are cleaned and dried so as to avoid any possibility of effecting analysis of the substance. It is an established law and

there cannot be any dispute about the mandatory nature of Rule 14. Hence, mere breach of Rule 14 would vitiate the trial because this is a provision affording opportunity to the accused of fair trial. The question whether breach of the Rule would result in change in results of the analysis or not, is not material. The material is when care is not taken regarding the bottles as mandated by the law, in which the sample is taken, there is a possibility that the result of analysis can be differed and that possibility culminates into a doubt which necessarily be resolved in the favour of the accused.

10. Now, scrutinising the facts of this case, the evidence of complainant at Exh.9 is very much clear. In his cross-examination, he has deposed that he was carrying a bag with him. The bag contained bottles, corks, all the instruments for sealing and packing, candles, brown paper, etc. They were kept in the bag. He did not remember that when the bag was opened before taking the sample but could remember that the bag was opened a day before taking the sample. He deposed that though he had opened the bag, he did not touch the material placed in the bag. He further states that the bottles were cleaned by his assistant. The bottles were fresh and new, which were purchased from the market.

11. Appreciating this evidence of the Food Inspector, what emerges is that, the mandated care which is provided under Rule 14 has not been taken by the complainant. There is no evidence that bottle was properly cleaned and dried. Only that Food Inspector deposes that it was cleaned by his Assistant. It is not made clear that when the bottles were cleaned by the Assistant or whether the bottles were cleaned by the Assistant in his presence. The material was placed in the bag since when that also is not coming forward from the prosecution evidence. It is, therefore, clear that the Food Inspector did not take care that the bottles were cleaned and dried in which the samples were taken. This is a clear breach of Rule 14, which would vitiate the trial. The accused is, therefore, entitled to acquittal on this ground alone and this court need not deal with some other contentions raised on behalf of the respondents.

12. However, this court would like to consider one aspect of the case i.e. regarding according of the consent to prosecute. It is required to be dealt with because in mechanical manner this case has been dealt with by the public authorities. Now, considering the facts of the case, as per the prosecution case itself

when complainant went to the shop, only respondent No.1 i.e. Ramchand Majnumal Kundnani was present. From whom, the sample was obtained by purchase. Now in the evidence, complainant vide Exh.80 deposes that the said shop was owned by one Revachand Tarachand Kundnani accused No.2 - respondent No.2 herein. In evidence, complainant disclosed that he came to possess this information through panch witness Gomati Ram Mathaprasad Ram, who has been examined and has not supported the prosecution case. At the same time, while pursuing panchnama - Exh.16, it is nowhere laid down that witness Gomati Ram Mathaprasad Ram panch informed the complainant that the shop was owned by accused No.2 i.e. respondent No.2. Except this, there is no iota of evidence to rope in respondent No.2 as an accused in this case. When the Food Inspector was confronted in cross that whether he had endeavoured to find out whether respondent No.2 was the owner of the shop in question, he answered that he could not find anything from the public record. Therefore, it is clear that when the Food Inspector processed the papers for obtaining sanction, he had only oral say of panch witness Gomati Ram Mathaprasad Ram to involve accused No.2 in this case. As stated before, when this court scrutinises the evidence that evidence

also becomes doubtful whether panch witness Gomati Ram Mathaprasad Ram informed the Food Inspector that the shop was owned by accused No.2. The question, therefore, arises that what was the material with him when the Food Inspector processed the case to obtain sanction, to prima facie involve respondent No.2 in this case as an accused. When he addressed letter to the Assistant Director to accord sanction for prosecution, he mentioned a one line in his letter that the proprietor of the shop was one Revachand Tarachand Kundnani. Except this bare line, there is nothing in the letter indicating how Revachand Tarachand Kundnani found to be the proprietor of the shop nor any document was attached with the letter indicating that the said Revachand Tarachand Kundnani was the proprietor of the shop. This letter reaches to its end and the Assistant Director accorded the sanction. Now, the question is whether the sanction could be said to be accorded after applying mind or it is merely mechanical process. It clearly appears that had the authority i.e. the Assistant Director applied its mind to the papers, it was necessary for him to inquire that how Revachand Tarachand Kundnani was the proprietor of the shop when there was no statement regarding this in the letter nor any document suggested that Revachand Tarachand was proprietor. Therefore, it necessarily suggests that the whole process for sanctioning the prosecution was purely

mechanical and without applying mind. On this count, the sanction must be held invalid and without applying the mind.

13. Therefore, in this view of the matter, the prosecution fails on two vital aspects. Breach of Rule 14 and sanction being invalid. The reasons for the sanction being invalid are as aforesaid and not assigned by the learned Magistrate. Therefore, the acquittal of the accused is required to be maintained not for the reasons recorded by the learned Magistrate but for the reasons as aforesaid.

14. In the result, this Appeal fails and is dismissed.

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